SINGLE BENCH

CF 1552 (4)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR,

WRIT PETITION NO. ~~Cr~~ 7640 of 2006

PETITIONER:

Firtu Ram Thakur, son of Shri B.R. Thakur, aged about 50 years, Tehisldar, Sankara, Tehsil Balod, District Durg.

C.R. No. 2295/06
Presented by Shri B.P. Sharma
dated 22/12/06

Versus

RESPONDENTS:

1. State of Chhattisgarh, through the Secretary, Ministry of Law & Ministry of Revenue, D.K.S. Bhawan, Mantralaya, Raipur.
2. Shri Dursai Shouri, son of Shri Sahadu Ram Shourey, aged about 27 years, resident of Badbattar, Vishrampur, Bastar.
3. Shri R.S. Dhruv, Inspector Anti Corruption Bureau, Jagdalpur, Presently posted at Anti Corruption Bureau, Raipur.
4. Shri Lawrence Khes, Investigating Officer, Anti Corruption Bureau, Bastar.

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WRIT PETITION UNDER ARTICLES 226 & ~~227~~ OF THE CONSTITUTION OF INDIA

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(196)

मामला क्रमांक W.P.No. 7640/2006 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

17-1-2007

Shri B.P. Sharma, Advocate for the petitioner.

Shri Sanjay S. Agrawal, Govt. Advocate for the State.

Heard.

2. By this petition, the petitioner has impugned the proceedings initiated against him in the Court of Special Judge, Prevention of Corruption Act, Bastar under Section 7, 13(1)(d) and 13 (2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the Act) on the basis of charge sheet filed against him in connection with Crime No. 15/2004 registered in the office, Anti Corruption Bureau, Raipur. The petitioner was posted as Tehsildar in Bastar District at the relevant time. The respondent No. 2 lodged a report on 3-12-2004 before the Dy. Superintendent of Police, Anti Corruption Bureau, Jagdalpur. On the basis of the complaint a preliminary enquiry was registered and the complaint was given a tape to record the conversation. On 4-12-2004, conversation was recorded. The complainant/ respondent No. 2 lodged yet another report before the Dy. Superintendent of police, Anti Corruption Bureau on 7-12-2004 and on the basis of this complaint, offence under Section 7 of the Act was registered against the petitioner. Thereafter trap was laid successfully as the petitioner accepted bribe money from the complainant which was subsequently recovered from him and on further investigation the petitioner was found to have received the currency note used in the trap and in these circumstances charge sheet was filed after obtaining sanction from the Government.

P.T.O

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(157)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.No. 7640/2006 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

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3. The petitioner has prayed for quashing of the criminal proceedings on the ground that (i) no valid sanction has been obtained as per Section 19 of the Act; (ii) the investigation has been made by a person not authorized under the law and, therefore, the prosecution based on unauthorized sanction is liable to be quashed; (iii) the offence for which the petitioner was charged was not a part of his official duty and, therefore, the ingredients of offence against the petitioner are absent.

4. On the other hand, Shri Sanjay S. Agrawal appearing for the State submitted that validity or otherwise of the sanction cannot be gone into at the threshold and the prosecution can prove the validity of sanction by producing the relevant file on the basis of which the sanction was accorded by the competent authority. He further submits that as per business allocation in the State, sanction is accorded by the Law Department of the State and the opinion of the Secretary Revenue in the note sheet is of no relevance. He further submits that from the documents filed by the petitioner himself, it is evident that on the basis of the complaint made by respondent No. 2 and after verifying the complaint on the conversation which was taped between the petitioner and the complainant, trap was laid and bribe amount was recovered from the petitioner, which is established by report of Chemical Analyst.

5. So far as valid sanction is concerned, learned counsel for the petitioner has referred to the note sheet initiated for the above purpose and submitted that the Secretary Revenue has categorically

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

W.P. No. 7640/2006

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

opined that in the matter of allotment of a fair price shop, Tehsildar has no role to play and the bribe money has not been recovered from his possession and prima facie it appears that as a result of conspiracy the petitioner has been trapped and in these circumstances, sanction for prosecution would not be proper, however ignoring this opinion the sanction has been granted by the Government without assigning any reason. It is well settled that the error or irregularity in according of sanction does not affect the validity of proceedings unless the court records satisfaction that such error, omission or irregularity has resulted in failure of justice. Whether authorities according sanction applied their mind or not, can be established by placing the relevant files before the Court during trial. The Supreme Court in the matters of **Prakash Singh Badal and another –v- State of Punjab** reported in (2007) 1 SCC 1 has categorically held that there is a distinction between the absence of sanction and the alleged invalidity on account of non-application of mind. The former question can be agitated at the threshold but the latter is a question which has to be raised during trial. Therefore, the objection regarding invalid sanction cannot be considered at this stage.

6. So far as the contention of the petitioner that the allotment of fair price shop does not form part of the duty of the petitioner and there is no co-relation between the alleged offence and the official duty assigned to the petitioner is concerned, from the material filed by the petitioner himself along with this petition and the statement

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

recorded during investigation, the allegations of the demand of bribe and subsequent acceptance is available in the record.

7. The 3rd ground of the petitioner that the investigation was conducted by an officer who was not competent to investigate is concerned, from perusal of the document annexed with the petition by the petitioner, prima facie it appears that Dy. Superintendent of Police, Anti Corruption Bureau was actively involved in the investigation. The petitioner without agitating this objection before the Special Court has straightway approached this Court. It shall be open to the petitioner to raise this objection before the Special Court during trial. Therefore I am of the considered opinion that the criminal proceedings initiated against the petitioner cannot be quashed at the threshold.

8. The petition being devoid of substance is liable to be dismissed and it is dismissed accordingly.

Sd/-
Dhirendra Mishra
Judge

P.T.O.